

# **Exhibit “U”**

Fred W. Schwinn (SBN 225575)  
CONSUMER LAW CENTER, INC.  
12 South First Street, Suite 1014  
San Jose, California 95113-2418  
Telephone Number: (408) 294-6100  
Facsimile Number: (408) 294-6190  
Email Address: fred.schwinn@sjconsumerlaw.com

Attorney for Defendant  
ELIZABETH P. AGNIR

ENDORSED

2011 OCT 14 P 1:02

David H. Yamasaki, Clerk of the Superior Court  
County of Santa Clara, California

By: T. O'Connell

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SANTA CLARA**

CHASE BANK USA, N.A.,

Plaintiff,

v.

ELIZABETH P. AGNIR, *et al.*,

Defendants.

Case No. 1-05-CV-054805  
(Limited Civil Case)

**DEFENDANT ELIZABETH P. AGNIR'S  
FIRST AMENDED ANSWER TO  
COMPLAINT OF CHASE BANK USA, N.A.**

Complaint Filed: December 19, 2005  
Trial Date: Not Set

COMES NOW Defendant, ELIZABETH P. AGNIR (hereinafter "Defendant"), by and through her attorney of record, Fred W. Schwinn of the Consumer Law Center, Inc., and for herself alone and for no other parties to this action, hereby generally denies and answers the Complaint filed herein by Plaintiff, CHASE BANK USA, N.A. (hereinafter "Plaintiff").

**GENERAL DENIAL**

Pursuant to the provisions of Code of Civil Procedure §§ 92(b) and 431.30(d), this answering Defendant denies, generally and specifically, in the conjunctive and disjunctive, each and every cause of action and allegation contained in the Complaint, and the Complaint as a whole, and further generally and specifically denies that Plaintiff has sustained and loss, injury, or damage as a proximate result of any act, breach or omission on the part of this Defendant.

///

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**  
3 **(Failure to State a Cause of Action)**

4 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
5 information and belief that the Complaint, and each and every cause of action contained in it, fails to  
6 state facts sufficient to constitute a cause of action against Defendant.

7 **SECOND AFFIRMATIVE DEFENSE**  
8 **(Estoppel)**

9 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
10 information and belief that the Plaintiff is estopped to assert such causes of action in that, by Plaintiff's  
11 own acts and omissions, Plaintiff induced Defendant to take certain actions and Plaintiff implicitly or  
12 explicitly consented to all alleged acts of Defendant.

13 **THIRD AFFIRMATIVE DEFENSE**  
14 **(Laches)**

15 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
16 information and belief that some or all of Plaintiff's causes of action are barred by the doctrine of  
17 laches.

18 **FOURTH AFFIRMATIVE DEFENSE**  
19 **(Waiver)**

20 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
21 information and belief that the Plaintiff has waived any and all claims it has or may have against the  
22 Defendant answering herein.

23 **FIFTH AFFIRMATIVE DEFENSE**  
24 **(Statute of Limitations)**

25 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
26 information and belief that the Plaintiff, and the causes of action set forth therein, are barred by the  
27  
28

1 applicable statute of limitations, including, but not limited to California Code of Civil Procedure §§  
2 337, 337.1, 337.15, 338, 339, 340, 343, 10 Del. Code § 8106, Va. Code Ann. § 8.01-246(4) and N.H.  
3 Rev. Stat. Ann. § 508:4.

4  
5 **SIXTH AFFIRMATIVE DEFENSE**  
6 **(Assumption of Risk)**

7 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
8 information and belief that the Plaintiff may not recover for the damages referred to in the Complaint (if  
9 occurring at all as alleged or otherwise) or that such recovery should be reduced on the grounds that  
10 Plaintiff knew of the risks involved and voluntarily assumed those risks.

11 **SEVENTH AFFIRMATIVE DEFENSE**  
12 **(Failure to Mitigate)**

13 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
14 information and belief that the Plaintiff failed to mitigate its alleged damages, if any, and recovery of  
15 any such damages must be reduced accordingly.

16 **EIGHTH AFFIRMATIVE DEFENSE**  
17 **(Performance Excused)**

18 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
19 information and belief that the Plaintiff failed to fully perform its obligations, and that such failures  
20 relieved and excused performance by Defendant.

21 **NINTH AFFIRMATIVE DEFENSE**  
22 **(Liability of Third Parties)**

23 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
24 information and belief that the damages suffered by Plaintiff, if any, were proximately caused or  
25 contributed to by the acts or omissions of other third parties and not by the wrongful conduct of  
26 Defendant. Should Plaintiff recover any sum herein, such amount should be reduced in proportion to  
27  
28



1 the extent that the negligence or other legal fault of other third parties, proximately caused or  
2 contributed to Plaintiff's damages, if any.

3  
4 **TENTH AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

5 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
6 information and belief that the Complaint is barred by the doctrine of unclean hands in that Plaintiff has  
7 acted in such a manner as to prevent it from recovering.

8  
9 **ELEVENTH AFFIRMATIVE DEFENSE**  
**(Consent)**

10 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
11 information and belief that recovery is barred by the Plaintiff's consent to the acts of the Defendant  
12 complained of, and by the Plaintiff's receipt of benefits from those acts.

13  
14 **TWELFTH AFFIRMATIVE DEFENSE**  
**(Unsatisfied Conditions Precedent)**

15 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
16 information and belief that the Complaint is barred by Plaintiff's own failure to perform, or to satisfy,  
17 some or all of the conditions precedent to any further obligations of the Defendant under the alleged  
18 contracts or agreement.

19  
20 **THIRTEENTH AFFIRMATIVE DEFENSE**  
**(Setoff)**

21 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
22 information and belief that cross-demands for money have existed between the parties and that said  
23 cross-demands should be setoff against each other, pursuant to Code of Civil Procedure § 431.70.

24  
25 **FOURTEENTH AFFIRMATIVE DEFENSE**  
**(Causation by Complaining Party)**

26 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
27  
28

1 information and belief that Plaintiff's alleged damages, if there were any, were wholly or partly  
2 contributed to any proximately caused by Plaintiff's own conduct and actions.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**  
4 **(Release)**

5 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
6 information and belief that the Complaint is barred by Plaintiff's release of Defendant from and against  
7 any and all claims, actions, causes of action, liabilities, liens, demands, obligations, losses, fees, costs or  
8 expenses of any kind arising from the subject matter underlying the Plaintiff's claims against the  
9 Defendant.  
10

11 **SIXTEENTH AFFIRMATIVE DEFENSE**  
12 **(Accord and Satisfaction)**

13 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
14 information and belief that the agreement set out in the Complaint, if made at all, is barred and made  
15 invalid by an accord and satisfaction, including but not limited to, the provisions of California Civil  
16 Code § 1521, *et seq.*  
17

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**  
19 **(Statute of Frauds)**

20 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
21 information and belief that the agreement set out in the Complaint, if made at all, is barred and made  
22 invalid by the Statute of Frauds, including but not limited to, the provisions of California Civil Code §  
23 1624.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**  
25 **(Unconscionability)**

26 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
27 information and belief that the agreement set out in the Complaint, if made at all, was both  
28

1 substantively unconscionable and procedurally unconscionable at the time it was entered into, including  
2 but not limited to, the provisions of California Civil Code § 1670.5.

3 **NINETEENTH AFFIRMATIVE DEFENSE**  
4 **(Ratification)**

5 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
6 information and belief that Plaintiff is barred from recovery because it ratified, in whole or in part,  
7 Defendant's alleged wrongful acts.

8 **TWENTIETH AFFIRMATIVE DEFENSE**  
9 **(Illegal Contract)**

10 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
11 information and belief that each and every one of Plaintiff's causes of action must fail because an  
12 illegal contract is void.

13 **TWENTY-FIRST AFFIRMATIVE DEFENSE**  
14 **(Lack of Consideration)**

15 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
16 information and belief that each an every one of Plaintiff's causes of action must fail for lack of  
17 consideration or failure of consideration.

18 **TWENTY- SECOND AFFIRMATIVE DEFENSE**  
19 **(Full Performance)**

20 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
21 information and belief that all duties and obligations arising out of any and all agreements as between  
22 Defendant and Plaintiff were duly performed, satisfied, and discharged, and, therefore, theses actions  
23 are barred by California Civil Code § 1473.

24 **TWENTY- THIRD AFFIRMATIVE DEFENSE**  
25 **(Extinction by Unauthorized Alteration)**

26 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
27  
28



1 information and belief that the written contract sued upon was intentionally destroyed, canceled or  
2 materially altered, by Plaintiff or its assignor or with its consent, thereby extinguishing all executory  
3 obligations of the contract in Plaintiff's favor, pursuant to Cal. Civil Code § 1700.

4  
5 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**  
6 **(Spoliation)**

7 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
8 information and belief that each and every one of Plaintiff's causes of action must fail because Plaintiff,  
9 or others, either intentionally or negligently, failed to preserve and/or spoiled the primary evidence to  
10 this litigation as against Defendant, thus failing to give Defendant any opportunity to inspect said  
11 evidence, thereby severely damaging and prejudicing Defendant's ability to present his/her defense.  
12 Plaintiff should be barred from introducing secondary or lesser evidence, and any recovery should be  
13 diminished accordingly.

14  
15 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**  
16 **(Identity Theft)**

17 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
18 information and belief that Defendant is the victim of an identity theft crime, including, but not limited  
19 to, a violation of California Penal Code § 530.5.

20 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**  
21 **(Reservation of Rights)**

22 As a separate and distinct affirmative defense to the Complaint, Defendant alleges on  
23 information and belief that the Complaint is stated in conclusory terms and therefore Defendant cannot  
24 fully anticipate all affirmative defenses that may be applicable in this section. Accordingly, Defendant  
25 reserves the right to add additional affirmative defenses if, and to the extent, such affirmative defenses  
26 are applicable in this section.

27  
28 ///



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: October 14, 2011

- By:

- 8 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address): Fred W. Schwinn (SBN 225575) Consumer Law Center, Inc. 12 South First Street, Suite 1014 San Jose, California 95113-2418 TELEPHONE NO.: (408) 294-6100 FAX NO. (Optional): (408) 294-6190 E-MAIL ADDRESS (Optional): fred.schwinn@sjconsumerlaw.com ATTORNEY FOR (Name): ELIZABETH P. AGNIR	FOR COURT USE ONLY  <div style="text-align: center; font-size: 2em; font-weight: bold;">ENDORSED</div> <div style="text-align: center; font-size: 1.2em;">2011 OCT 14 P 4: 02</div> <div style="text-align: center; font-size: 0.8em;">David H. Yamasaki, Clerk of the Superior Court County of Santa Clara, California</div> <div style="text-align: center;">By: <u>ELIZABETH P. AGNIR</u></div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA</b> STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Main Courthouse - Downtown San Jose	
PETITIONER/PLAINTIFF: CHASE BANK USA N.A.  RESPONDENT/DEFENDANT: ELIZABETH P. AGNIR	
<b>PROOF OF SERVICE BY FIRST-CLASS MAIL - CIVIL</b>	CASE NUMBER: 1-05-CV-054805

*(Do not use this Proof of Service to show service of a Summons and Complaint.)*

1. I am over 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:  
 12 South First Street, Suite 1014  
 San Jose, California 95113-2418
3. On (date): October 14, 2011 I mailed from (city and state): San Jose, California  
 the following documents (specify):  
 Defendant Elizabeth P. Agnir's First Amended Answer to Complaint of Chase Bank USA, N.A.

☐ The documents are listed in the Attachment to Proof of Service by First-Class Mail - Civil (Documents Served) (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):
  - a. ☐ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
  - b. ☒ placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
  - a. Name of person served: Ian Willens
  - b. Address of person served:  
 Gryphon Solutions, LLC  
 17772 Irvine Boulevard, Suite 203  
 Tustin, CA 92780

☐ The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail-Civil (Persons Served) (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 14, 2011

Fred W. Schwinn (SBN 225575)  
 (TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)